



4310-02

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 226

Notice of Intent to Establish an Osage Negotiated Rulemaking Committee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of intent; request for comments or nominations.

SUMMARY: The Bureau of Indian Affairs (BIA) is announcing its intent to establish an Osage Negotiated Rulemaking Committee (Committee). The Committee will develop specific recommendations to address future management and administration of the Osage Mineral Estate, including potential revisions to the regulations governing leasing of Osage Reservation Lands for Oil and Gas Mining, 25 CFR Part 226. The Committee will include representatives of parties who would be affected by a final rule. BIA solicits comments on this proposal to establish the Committee and its proposed membership. BIA also invites anyone who will be significantly affected by the proposed rule and believes their interests will not be adequately represented by the proposed members listed below to nominate a member to the Committee.

DATES: Submit nominations for Committee members or written comments on this notice on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].**

ADDRESSES: You may submit nominations to the Committee or comments on this notice by any of the following methods:

- Mail comments or nominations to Mr. Robert Impson, Designated Federal Officer, Eastern Oklahoma Regional Office, Bureau of Indian Affairs, 3100 W. Peak Blvd., Muskogee, OK 74401; (918) 781-4600.
- Hand-carry comments or use an overnight courier service. Our courier address is 3100 W. Peak Blvd., Muskogee, OK 74401; (918) 781-4600.
- Email comments or nominations to robert.impson@bia.gov. Include the words Osage Negotiated Rulemaking in the subject line.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Impson, Designated Federal Officer, Eastern Oklahoma Regional Office, Bureau of Indian Affairs, 3111 W. Peak Blvd., Muskogee, OK 74401; robert.impson@bia.gov; (918) 781-4600; (918) 781-4604 (FAX)

SUPPLEMENTARY INFORMATION:

I. Background

On October 14, 2011, the United States and the Osage Nation (formerly known as the Osage Tribe) signed a Settlement Agreement to resolve litigation regarding alleged mismanagement of the Osage Nation's oil and gas mineral estate, among other claims. As part of the Settlement Agreement, the parties agreed that it would be mutually beneficial "to address means of improving the trust management of the Osage Mineral Estate, the Osage Tribal Trust Account, and Other Osage Accounts." Settlement Agreement, Paragraph 1.i. During settlement negotiations, it became apparent that a review of the existing regulations is necessary to better

assist the BIA in managing the Osage Mineral Estate. The parties agreed to engage in a negotiated rulemaking for this purpose, Settlement Agreement, Paragraph 9.b.

II. Statutory Authorities

The Negotiated Rulemaking Act of 1996 (NRA) (5 U.S.C. 561 *et seq.*); the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2, section 1 *et seq.*); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*); the Act of June 28, 1906, ch. 3572, 34 Stat. 539, as amended; and the Leasing of Osage Reservation Lands for Oil and Gas Mining, 25 CFR Part 226.

III. The Committee and Its Process

In a negotiated rulemaking, a report containing recommendations for the provisions of the proposed rule is developed by a committee composed of representatives of government and the interests that will be significantly affected by the rule. Decisions on what to include in the report are made by consensus.

“Consensus” means unanimous concurrence among the interests represented on a negotiated rulemaking committee established under this subchapter, unless such committee (A) agrees to define such term to mean a general but not unanimous concurrence; or (B) agrees upon another specified definition. 5 U.S.C. 562(2)(A) and (B).

The negotiated rulemaking process is initiated by the agency's identification of interests potentially affected by the rulemaking under consideration. By this notice, BIA is soliciting comments on this action.

Following receipt of comments, BIA will establish the Committee. The Committee will advise the Secretary through the Bureau of Indian Affairs (BIA) on a rulemaking to revise 25 C.F.R. Part 226 regarding the future management and administration of oil and gas mining leases for Osage Reservation lands. The Committee will act solely in an advisory capacity to BIA. After the Committee produces a consensus report on the proposed rule, as discussed in more detail below, BIA will develop a proposed rule to be published in the *Federal Register*.

Under 5 U.S.C. 563, the head of the agency is required to determine that use of the negotiated rulemaking procedure is in the public interest. In making such a determination, the agency head must consider seven factors. Taking these factors into account, BIA has determined that a negotiated rulemaking is in the public interest because:

1. A rule is needed. BIA has determined that in order to avoid future litigation and to better assist it in managing and administering the Osage Mineral Estate, a rule is necessary.
2. A limited number of identifiable interests will be significantly affected by the rule. The regulations governing the Osage Mineral Estate apply only to the Osage Mineral Estate and the Osage Agency, and do not have broader applicability. For this reason, a limited number of readily identifiable interests will be significantly affected by the rule.

3. Due to the limited applicability of the current regulations and the limited number of interest holders, there is a reasonable likelihood that BIA can convene a Committee with a balanced representation of persons who:
 - Can adequately represent the interests defined in item 2, above; and
 - Are willing to negotiate in good faith to attempt to reach a consensus on provisions of a proposed rule.
4. There is reasonable likelihood that the Committee will reach consensus on a proposed rule within a fixed period of time. This is due to the settlement of the litigation and the desire of the Osage Nation and the Bureau of Indian Affairs to avoid further litigation by addressing and improving management and administration of the Osage Mineral Estate as soon as possible.
5. The use of negotiated rulemaking will not unreasonably delay development of a proposed rule and the issuance of a final rule. We anticipate that negotiation will expedite a proposed rule and ultimately the acceptance of a final rule.
6. BIA is committed to ensuring that the Committee has sufficient resources to complete its work in a timely fashion.

7. BIA, to the maximum extent possible and consistent with its legal obligations, will use the consensus report of the Committee as the basis for a proposed rule for public notice and comment.

IV. Negotiated Rulemaking Procedures

In compliance with FACA and NRA, BIA will use the following procedures and guidelines for this negotiated rulemaking. BIA may modify them in response to comments received on this notice or during the negotiation process.

A. Committee Formation

The Committee will be formed and operate in full compliance with the requirements of FACA and NRA and under the guidelines of the Committee's charter.

B. Interests Involved

BIA intends to ensure full and adequate representation of those interests that are expected to be significantly affected by the proposed rule. Under 5 U.S.C. 562(5), "'interest' means with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner." The regulations governing the Osage Mineral Estate apply only to the Osage Mineral Estate and the Osage Agency. For this reason, BIA believes the membership described below fully and adequately represents those interests expected to be significantly affected by the proposed rule.

C. Members

The Committee cannot exceed 25 members, and BIA prefers nine members. The Secretary of the Interior (Secretary) will provide four members (two from BIA, one from the Bureau of Land Management, and one from the Office of Natural Resources Revenue), plus a facilitator. Five members have been chosen by the Osage Minerals Council. The facilitator will not count against the membership and will not be a voting member.

Osage Representatives

Galen Crum

Joseph Abbott, Jr.

James Andrew Yates

Melvin Core

Curtis Oren Bear

Alternate Osage Representatives

Dudley Whitehorn

Myron Red Eagle

Federal Representatives

Daryl LaCounte, Bureau of Indian Affairs

Stephen Manydeeds, Office of the Assistant Secretary—Indian Affairs

Paul Tyler, Office of Natural Resources Revenue

James Stockbridge, Bureau of Land Management

Responsibility for expenses is stated under 5 U.S.C. 568(c) as follows:

Members of a negotiated rulemaking committee shall be responsible for their own expenses of participation in such committee, except that an agency may, in accordance with section 7(d) of the Federal Advisory Committee Act, pay for a member's reasonable travel and per diem expenses, expenses to obtain technical assistance, and a reasonable rate of compensation, if—

- (1) such member certifies a lack of adequate financial resources to participate in the committee; and
- (2) the agency determines that such member's participation in the committee is necessary to assure an adequate representation of the member's interest.

BIA commits to pay the travel and per diem expenses of Committee members if appropriate under the NRA and Federal Travel Regulations.

D. Tentative Schedule

BIA will publish the first meeting date in a Federal Register notice. The Committee will determine the dates of future meetings, notice of which will then be published in the Federal Register. At the first meeting, the Committee will formulate ground rules for developing consensus and establish whether there are any issues in addition to those identified by the Osage Nation and BIA to be addressed as part of the negotiated rulemaking. After the Committee reaches consensus on its report, BIA will develop a proposed rule to be published in the Federal Register.

BIA plans to publish a proposed rule for notice and comment within 30 months of convening the Committee. The Committee will meet bi-monthly with the first meeting tentatively planned for August 2012.

BIA plans to terminate the Committee if it does not reach consensus on a report within 24 months of the first meeting. The Committee may end earlier upon the promulgation of the final rule, or if either BIA, after consulting with the Committee, or the Committee itself, specifies an earlier termination date.

E. Technical Assistance

BIA will ensure that the Committee has sufficient administrative and technical resources to complete its work in a timely fashion. BIA, with the help of a facilitator, will prepare all agendas, provide meeting notes, and provide a final report of any issues on which the Committee reaches consensus. BIA will also obtain space for all meetings.

V. Request for Nominations and Comments

BIA invites written comments on this initiative. Additionally, anyone who will be significantly affected by the proposed rule and who believes their interests will not be adequately represented by the members proposed above is invited to apply for or nominate a Committee member as follows. Each nomination or application must include:

- (1) the name of the applicant or nominee and a description of the interests such person shall represent;
- (2) evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent
- (3) a written commitment that the applicant or nominee will actively participate in good faith in

the Committee's work; and

(4) the reasons that the persons nominated in this notice above do not adequately represent the interests of the person submitting the application or nomination.

All nominations and written comments must be sent to an appropriate address as listed in the ADDRESSES section of this notice.

CERTIFICATION

For the above reasons, I hereby certify that the Osage Negotiated Rulemaking Committee is in the public interest.

June 13, 2012
Date

Michael Black
Director, Bureau of Indian Affairs

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